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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/725,182	11/29/2000	Jeffrey R. Ryan	0207-0007 (WRAIR 98-41X)	8763

7590 05/14/2002

Office of the Staff Judge Advocate
U.S. Army Medical Research and Materiel Command
ATTN: MCMR-JA (Ms. Elizabeth Arwine)
504 Scott Street
Ft. Detrick, MD 21702-5012

EXAMINER

BASKAR, PADMAVATHI

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 05/14/2002

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/725,182

Applicant(s)

RYAN ET AL.

Examiner

Padmavathi v Baskar

Art Unit

1645

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 4/18/02 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): 35 USC 112, first paragraph.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see the attached note.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: _____.

Claim(s) rejected: 1,3-8,11-20,27,29 and 41-53.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: Interview Summary, paper # 15

ADVISORY ACTION

1. Applicant's amendment filed on 4/18/02 is entered. Claim 1 has been amended. Claims 9, 10, 21-26, 28 and 30-40 have been canceled. Claims 1, 3-8, 11-20, 27, 29 and 41-53 are pending in the application.
2. The amendment to the claim 1 obviates the enablement rejection under 35 U.S.C. 112, first paragraph. However, the proposed amendment and the Declarations provided by Suzannah K. Sundby and Dr. Alan.J. Magill did not obviate the rejections of record under 35 U.S.C. 102 (b) and 103 (a) paragraph.
3. Claims 1, 3-5, 7, 8 and 41-44 have been rejected under 35U.S.C. 102 (b) rejection as being anticipated by Martin et al. Applicant argues that the cited prior art is a non-enabling disclosure, and the Declarations provided by Suzannah K. Sundby and Dr. Alan.J. Magill should obviate the rejection. The publication date is more than one year back of applicant's effective filing date. Such a reference is a "statutory bar" under 35U.S.C. 102 (b). Applicant argues that the protein medium comprising oncotic agent is not disclosed in the prior art. It is the Examiner's position that Martin et al used the protein free medium XOM in order to culture *Leishmania* strains from KEMRI, the medium works to obtain soluble antigens. Again, the Examiner would like to point out that the issue is an immunoassay for detecting the antibodies. Martin et al clearly disclose such an assay, which uses the soluble antigens obtained from culturing promastigotes in protein free medium and the immunoassay works.
4. Claims 45-49, 11-20, 27, 29 and 50-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al 1998 (Annals of Tropical Medicine and Parasitology 1998, 92 (5) 571-577) in view of WO 99/56755 and Wirtz et al.

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Claims 1, 3 -8 and 41-44 under 35 U.S.C. 103(a) as being unpatentable over Martin et al as applied above and further in view of Wirtz et al 1989, Bulletin of the World Health Organization 1989, 67/5, 535-542.

Applicant argues that the cited prior art is a non-enabling disclosure, and the Declarations provided by Suzannah K. Sundby and Dr. Alan.J. Magill should obviate the rejection. The declarations (37C.F.R 1.132) provided by Suzannah K. Sundby and Dr. Alan.J. Magill do not address the issue since neither of them are co-authors in the reference. Applicant is advised to submit an appropriate Declaration (see MPEP715.01) to remove the publication as a reference under 103 (a).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Padma Baskar whose telephone number is (703) 308-8886. The examiner can normally be reached on Monday through Friday from 6:30 AM to 4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette smith, can be reached on (703) 308-3909. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Padma Baskar Ph.D.

5/3/02




LYNETTE R. F. SMITH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600